



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 79**

**[MB Docket Nos. 12-108, 12-107; FCC 13-138]**

Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty- First Century Communications and Video Accessibility Act of 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on issues related to rules implementing the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”). Specifically, the Commission explores whether the Commission should adopt rules to define the term “usable” for purposes of implementing the CVAA. The Commission also explores whether the phrase “accessibility features” in the Communications Act of 1934 (“the Act”) includes user display settings for closed captioning and whether those sections can be interpreted to require covered entities to ensure that consumers are able to locate and control such settings. In addition, the Commission explores whether there are possible sources of authority for requiring MVPDs to ensure that video programming guides and menus that provide channel and program information include high level channel and program descriptions and titles, as well as a symbol identifying the programs with accessibility options. The Commission

also explores whether to require manufacturers of apparatus covered by the CVAA to provide access to the secondary audio stream used for audible emergency information by a mechanism reasonably comparable to a button, key, or icon. Furthermore, the Commission explores whether it should impose additional notification requirements on MVPDs regarding the availability of accessible equipment and, if so, what those notification requirements should be. The Commission tentatively concludes that equipment manufacturers subject to the CVAA should be required pursuant to the CVAA to inform consumers about the availability of audibly accessible devices and accessibility solutions.

**DATES:** Comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by MB Docket Nos. 12-108, 12-107, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via email to [Nicholas A. Fraser@omb.eop.gov](mailto:Nicholas_A.Fraser@omb.eop.gov) or via fax at (202) 395-5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Adam Copeland, [Adam.Copeland@fcc.gov](mailto:Adam.Copeland@fcc.gov), or Maria Mullarkey, [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), of the Policy Division, Media Bureau, (202) 418-2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918 or send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking, FCC 13–138, adopted on October 29, 2013 and released on October 31, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center,

Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

The FNPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts a new or revised information collection requirement, the Commission will publish a separate document in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

## **Summary of the Further Notice of Proposed Rulemaking**

### **I. INTRODUCTION**

1. We issue a Further Notice of Proposed Rulemaking ("FNPRM") that:

- Explores whether the Commission should adopt rules to define the term “usable” for purposes of implementing Section 204 of the CVAA.
- Explores whether the phrase “accessibility features” in Sections 303(aa)(3) and 303(bb)(2) of the Act includes user display settings for closed captioning and whether those sections can be interpreted to require covered entities to ensure that consumers are able to locate and control such settings;
- Explores whether there are possible sources of authority for the Commission to require MVPDs to ensure that video programming guides and menus that provide channel and program information include high level channel and program descriptions and titles, as well as a symbol identifying the programs with accessibility options;
- Explores whether the Commission should require manufacturers of apparatus covered by Section 203 of the CVAA to provide access to the secondary audio stream used for audible emergency information by a mechanism reasonably comparable to a button, key, or icon;
- Explores whether the Commission should impose additional notification requirements on MVPDs regarding the availability of accessible equipment and, if so, what those notification requirements should be; and
- Tentatively concludes that equipment manufacturers subject to Section 205 should be required pursuant to Section 205(b)(1) to inform consumers about the availability of audibly accessible devices and accessibility solutions.

## II. FURTHER NOTICE OF PROPOSED RULEMAKING

2. Usability Requirements. We seek comment on whether we should adopt rules to define the term “usable” for purposes of implementing Section 204 of the CVAA. Section 303(aa)(1) of the Act specifies that covered apparatus must “be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired.” Similarly, Section 303(aa)(2) of the Act specifies that the appropriate built-in apparatus functions that are accessed through on-screen text menus or other visual indicators “shall be accompanied by audio output that is either integrated or peripheral to the apparatus, so that such menus or indicators are accessible to and usable by individuals who are blind or visually impaired in real-time.” In other CVAA contexts, the Commission has relied on the definition of “usable” in § 6.3(1) of our rules, which states that “[t]he term usable shall mean that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities.”<sup>1</sup> For example, Section 716 of the Act requires providers of advanced communications services (“ACS”) (i.e., non-

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<sup>1</sup> 47 CFR 6.3(l). The Commission adopted the definition of “usable” in § 6.3(l) of its rules pursuant to Section 255 of the Act, which requires telecommunications providers and equipment manufacturers to make their products “accessible to and usable by” persons with disabilities, relying on the U.S. Access Board’s guidelines. See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417,6429-30, paras. 21-29 (1999) (“Section 255 Order”). The U.S. Access Board is “an independent Federal agency devoted to accessibility for people with disabilities [which] . . . develops and maintains design criteria for the built environment, transit vehicles, telecommunications equipment, and for electronic and information technology.” Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14563, para. 10, n. 30 (2011) (“ACS Order”).

interconnected VoIP service, electronic messaging service, and interoperable video conferencing service) and manufacturers of equipment used for ACS to make their products “accessible to and usable by” persons with disabilities, and the rules implementing these sections adopt the Commission’s “well established” definition of “usable” in § 6.3(l).<sup>2</sup> In addition, when implementing Section 718 of the Act, which imposes accessibility requirements on service providers and manufacturers with respect to Internet browsers on mobile phones, the Commission defined the term “usable” “as the Commission has previously defined th[is] term[] when implementing Sections [716 and 255] of the Act.”<sup>3</sup> We seek comment on whether we should define the term “usable” consistent with the definition in § 6.3(l). We also seek comment on the costs and benefits of imposing usability requirements on covered entities, including small entities.

3. Further, we seek comment on whether we should impose information, documentation, and training requirements consistent with the requirements set forth in § 6.11 of our rules for purposes of implementing Sections 204 and 205 of the CVAA. Section 6.11 of our rules requires manufacturers and service providers to “ensure access to information and documentation it provides to its customers, if readily achievable,” which “includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product,” and it delineates “other readily achievable steps” that should be taken “as necessary.”<sup>4</sup> Section 6.11 also requires manufacturers and

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<sup>2</sup> See 47 CFR 14.21(c); ACS Order, 26 FCC Rcd at 14605, para. 115.

<sup>3</sup> Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198, Second Report and Order, 28 FCC Rcd 5957, 5967, para. 19 (2013) (“ACS Second Report and Order”).

<sup>4</sup> 47 CFR 6.11(a).

service providers to include the contact method for obtaining the information required by § 6.11(a) in general product information, and to consider certain accessibility-related topics when developing or modifying training programs.<sup>5</sup> The Commission previously has adopted information, documentation, and training requirements when implementing Sections 716 and 718 of the Act, which both require that covered products be “accessible to and usable by” individuals with disabilities.<sup>6</sup> We seek comment on whether to adopt analogous requirements pursuant to Section 204, which likewise requires that covered apparatus be “accessible to and usable by” individuals with visual disabilities. We also seek comment on whether we should impose such information, documentation, and training requirements on entities covered by Section 205, pursuant to our authority to “prescribe such regulations as are necessary to implement” the requirements of that section.<sup>7</sup> We seek comment on the costs and benefits of imposing information, documentation, and training requirements on covered entities, including small entities.

4. Mechanism for Activating Other Accessibility Features. We seek further comment on whether the phrase “accessibility features” in Sections 303(aa)(3) and 303(bb)(2) of the Act includes user display settings for closed captioning and whether those sections can be interpreted to require covered entities to ensure that consumers are able to locate and control such settings. In the NPRM, we sought comment on whether there are additional “accessibility features” that Sections 204 and 205 require to be activated via a mechanism similar to a button, key, or icon, including closed captioning settings (e.g., font, color, and size of captions), and whether such settings should be

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<sup>5</sup> Id. 6.11(b)-(c).

<sup>6</sup> See id. 14.20(d); ACS Order, 26 FCC Rcd at 14595-96, para. 94; ACS Second Report and Order, 28 FCC Rcd at 5969, para. 23.

<sup>7</sup> Pub. L. 111-260, 205(b)(1).



required to be in the first level of a menu. The record reflects divergent views on this issue. As discussed in the Report and Order, several commenters support a broad interpretation of the term “accessibility features” to include other accessibility settings such as closed captioning settings, whereas CEA and other industry commenters argue that the phrase “accessibility features” “is not an invitation to impose new, and hitherto unspecified, regulatory requirements on additional accessibility features.”

5. We believe there are important public interest considerations in favor of ensuring that consumers are able to locate and access user display settings for closed captioning. When the Commission adopted technical standards for the display of closed captions on digital television receivers, it explained that the “capability to alter fonts, sizes, colors, backgrounds and more, can enable a greater number of persons who are deaf and hard of hearing to take advantage of closed captioning.”<sup>8</sup> Noting the limitations of the “one-size fits all approach” in use by the analog captioning system, the Commission concluded that “[o]nly by requiring decoders to respond to these various [display] features can we ensure that closed captioning will be accessible for the greatest number of persons who are deaf and hard of hearing, and thereby achieve Congress’ vision that to the fullest extent made possible by technology, people who are deaf or hard of hearing have equal access to the television medium.”<sup>9</sup> More recently, the Commission adopted a recommendation from the VPAAC to ensure viewer access to display

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<sup>8</sup> Closed Captioning Requirements for Digital Television Receivers; Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, ET Docket No. 99-254, MM Docket No. 95-176, Report and Order, 15 FCC Rcd 16788, 16792, para. 10 (2000) (“DTV Closed Captioning Order”).

<sup>9</sup> Id. at 16793, para. 13.

capabilities in video devices that deliver closed captions on programs over the Internet.<sup>10</sup>

The Commission explained that access to these display capabilities would ensure that consumers viewing such online programming would have a captioning experience equivalent to the experience provided when the content was aired on television,<sup>11</sup> and further “noted the ‘substantial benefits for consumers’ that are provided when video programming apparatus support user options that enable closed caption displays to be customized to suit the needs of individual viewers.”<sup>12</sup>

6. Notwithstanding these Commission efforts to provide consumers with the ability to tailor the display of closed captions to their needs, the record in this proceeding reflects the ongoing problems that consumers have in finding and controlling these display features.<sup>13</sup> NAD/Consumer Groups reference the “long and frustrating history of the difficulties in accessing closed captioning features on apparatus and navigation devices,” and describe the “[m]ost infamously difficult” example, in which a cable box must first be turned off in order to access the captioning mechanisms through a special menu feature. One interpretation of the statute could be that the explicit inclusion of the term “accessibility features” in Sections 303(aa)(3) and 303(bb)(2) of the Act by

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<sup>10</sup> Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-154, Report and Order, 27 FCC Rcd 787, 850-54, paras. 109-13 (2012) (“IP Closed Captioning Order”).

<sup>11</sup> Id. at 852-53, para. 112.

<sup>12</sup> Id. at 851, para. 109, citing DTV Closed Captioning Order, 15 FCC Rcd at 16793, para. 7.

<sup>13</sup> The technical standards for closed captioning display for digital television receivers have been in effect for over a decade. See 47 CFR 79.102; DTV Closed Captioning Order, 15 FCC Rcd at 16810, para. 66. Similar rules for other apparatus (such as computers and tablets) adopted in the IP Closed Captioning Order will begin applying to devices manufactured after January 1, 2014. See Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-154, Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785, 8786, para. 1 (2013) (“IP Closed Captioning Reconsideration Order”).

Congress,<sup>14</sup> which had prior knowledge of Commission efforts to provide viewers with the tools to control the appearance of closed captions, gives the Commission sufficient discretion to require the provision of a mechanism that is reasonably comparable to a button, key, or icon designated for accessing caption display settings. We seek comment on this interpretation, including the costs to covered entities, including small entities, and the benefits to consumers of requiring this access. Alternatively, under another interpretation of the statute the phrase “accessibility features” “merely describes an activation mechanism — i.e., a mechanism for activating multiple accessibility features — to which the mandated user control mechanism for closed captioning . . . may be reasonably comparable to satisfy the requirements of the statute.” Thus, under this interpretation, Sections 303(aa)(3) and 303(bb)(2) would not give the Commission the authority to require the provision of a mechanism that is reasonably comparable to a button, key, or icon designated for accessing caption display settings. We seek comment on this interpretation.

7. In addition, to develop the record more fully on this issue, we seek comment on how we would implement a requirement to provide an activation mechanism reasonably comparable to a button, key, or icon with regard to user display settings for closed captioning, which, at the present time, typically require users to navigate through multiple on-screen text menus to select settings. Specifically, should we require, pursuant to Sections 303(aa)(3) and 303(bb)(2) of the Act, that covered entities facilitate

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<sup>14</sup> 47 U.S.C. 303(aa)(3), 303(bb)(2). Section 303(aa)(3) requires digital apparatus covered by Section 204 of the CVAA to provide “built in access to [] closed captioning and video description features through a mechanism that is reasonably comparable to a button, key, or icon designated for activating the closed captioning or accessibility features.” Id. 303(aa)(3) (emphasis added). Similarly, Section 303(bb)(2) requires “navigation devices with built-in closed captioning capability” covered by Section 205 of the CVAA to provide “access to that capability through a mechanism [that] is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features.” Id. 303(bb)(2) (emphasis added).

the ability of viewers to locate and control such settings? Would inclusion of closed captioning settings in the first level of a menu be one way of achieving compliance with such a requirement? Alternatively, should the first level menu include a means of generally accessing “accessibility features,” which could then guide consumers to various features, including the closed captioning display settings, as well as any information about built-in or the peripheral provision of audible output for on-screen text menus (and program guides for 205 navigation devices)? With respect to Section 205 of the CVAA, would this approach provide the “maximum flexibility” to covered entities “in the selection of means for compliance,” as mandated by the statute?<sup>15</sup> Should we require covered entities to consult with consumer groups to achieve best practices to ensure the accessibility of closed captioning settings? What time frame would be appropriate for requiring covered entities to provide a mechanism reasonably comparable to a button, key, or icon for activating the caption display user settings? We ask commenters to justify any deadline they propose by explaining what must be done by that deadline to comply with the proposed requirement.

8. Program Information for PEG Channels. We find in the Report and Order above that the record is insufficient to require MVPDs to include specific information in video programming guides and menus at this time. We seek comment on possible sources of authority for requiring MVPDs to ensure that video programming guides and menus that provide channel and program information include “high level channel and program descriptions and titles, as well as a symbol identifying the programs with accessibility options (captioning and video description).” For example, some commenters state that the Commission has direct authority under the CVAA to adopt this

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<sup>15</sup> Pub. L. 111-260, 205(b)(5).

requirement. We seek comment on that assertion. We also seek comment from industry members on any technical issues that MVPDs may face in complying with a requirement to include specific information in video programming guides and menus, and in particular whether it is technically feasible for operators to provide this specific information for PEG or other programs. What are the costs that would be incurred by MVPDs, including small MVPDs, to comply with such a requirement, and what would be the benefits of adopting this requirement? Should such a requirement apply to all channels and programs included in a guide or menu, or should it apply only to PEG channels and programs?

9. Accessing Secondary Audio Stream for Emergency Information (MB Docket No. 12-107). We seek comment on whether to require manufacturers of apparatus covered by Section 203 of the CVAA to provide access to the secondary audio stream used for audible emergency information by a mechanism reasonably comparable to a button, key, or icon. Section 203 requires that apparatus designed to receive and play back video programming transmitted simultaneously with sound “have the capability to . . . make available emergency information (as that term is defined in § 79.2 of the Commission’s regulations [ ]) in a manner that is accessible to individuals who are blind or visually impaired.”<sup>16</sup> In the Emergency Information/Video Description Order, we adopted rules implementing Section 202 of the CVAA that require video programming distributors, video programming providers, and program owners to convey televised emergency information aurally in a secondary audio stream, when such information is conveyed visually during programming other than newscasts, for example, in an on-

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<sup>16</sup> 47 U.S.C. 303(u)(1)(C). Section 203 also requires covered apparatus to “have the capability to . . . make available the transmission and delivery of video description services.” Id. 303(u)(1)(B).

screen crawl.<sup>17</sup> We also adopted rules implementing Section 203 of the CVAA that “require covered apparatus to decode and make available the secondary audio stream, in a manner that enables consumers to select the stream used for the transmission and delivery of emergency information.”<sup>18</sup> The record in this proceeding reflects the experiences of numerous individuals who are blind or visually impaired who currently are unable to get to the secondary audio stream to access video described programming because the mechanism for switching from the main program audio to the secondary audio stream is buried in on-screen menus that are not accessible to them. While it is important that consumers who are blind or visually impaired be able to access the video description services that make video programming accessible to them, it is even more critical that consumers who are blind or visually impaired be able to access the audible emergency information that will be required to be provided via the secondary audio stream.

10. Section 303(u)(1)(C) requires covered apparatus to “make available emergency information . . . in a manner that is accessible to individuals who are blind or visually impaired.”<sup>19</sup> Because of the critically urgent nature of emergency information, which is defined in our rules as “[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property,”<sup>20</sup> we believe that individuals who are blind or visually impaired should be able to access the secondary audio stream to obtain audible emergency information in a simple, straightforward, and

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<sup>17</sup> See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket Nos. 12-107, 11-43, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, 4881, para. 12 (2013) (“Emergency Information/Video Description Order”).

<sup>18</sup> Id. at 4907, para. 50.

<sup>19</sup> 47 U.S.C. 303(u)(1)(C).

<sup>20</sup> 47 CFR 79.2(a)(2).

timely manner. Does Section 303(u)(1)(C) of the Act give the Commission authority to require that access to the secondary audio stream for audible emergency information on apparatus covered by Section 203 be available in a simple, straightforward, and timely manner, such as through a mechanism that is reasonably comparable to a button, key, or icon? Or, is the Commission's authority to impose such a requirement limited to the Section 204 or 205 context? For example, because Congress specifically required a mechanism reasonably comparable to a button, key, or icon in Sections 204 and 205 but did not do so in Section 203, does the statute restrict the Commission from imposing such a requirement in the Section 203 context? We also seek comment on the costs and benefits of imposing these requirements on covered entities, including small entities.

11. We invite input on how we would implement a requirement that entities covered by Section 203 of the CVAA provide access to the secondary audio stream used for audible emergency information by a mechanism reasonably comparable to a button, key, or icon. What time frame would be appropriate for requiring covered entities to provide a mechanism reasonably comparable to a button, key, or icon for accessing the secondary audio stream? Should the deadline be consistent with the deadline for compliance with Section 203 apparatus requirements that we adopted in the Emergency Information/Video Description Order?<sup>21</sup> Or would device manufacturers need additional time to come into compliance? We ask commenters to justify any deadline they propose by explaining what must be done by that deadline to comply with the proposed requirement. We also seek comment on the costs to manufacturers, including those that

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<sup>21</sup> See Emergency Information/Video Description Order, 28 FCC Rcd at 4923, para. 76 (imposing a deadline of two years from the date of Federal Register publication for compliance with the emergency information and video description apparatus requirements of Section 203 adopted therein; the compliance deadline is May 26, 2015).

are small entities, and the benefits to consumers of requiring access to the secondary audio stream used for audible emergency information by a mechanism reasonably comparable to a button, key, or icon.

12. Additional MVPD Notice. The accompanying Report and Order concludes that MVPDs subject to Section 205 must inform their subscribers about the availability of audibly accessible devices and accessibility solutions pursuant to Section 205(b)(1). Specifically, we require that, when providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices. We also require that MVPDs provide notice on their official websites about the availability of accessible navigation devices. We seek comment on whether we should impose additional notification requirements on MVPDs and, if so, what those notification requirements should be. Should we require annual notices to all subscribers, as proposed by Montgomery County?<sup>22</sup> Should MVPDs be required to include this information on or with every monthly bill? Are there other methods by which we should require MVPDs to publicize information about their audibly accessible devices and accessibility solutions? For example, should MVPDs be required to notify consumers about the availability of accessible devices or accessibility solutions in marketing efforts, through their customer service centers and phone systems, or by other means? If so, describe what those measures should be and the costs and benefits associated with such measures to covered entities, including small entities. To what

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<sup>22</sup> If so, should the annual requirement be limited to no more than five years after the rules become effective? Should the notices occur more frequently than annually, such as on a monthly or quarterly basis?



extent should voluntary notification efforts by covered MVPDs obviate the need for additional requirements?

13. We seek specific comment from individuals who are blind or visually impaired about the types of MVPD notices that would most effectively communicate information about the availability of audibly accessible devices and accessibility solutions. We also seek comment about whether MVPD notification requirements are necessary to inform consumers about the availability of devices with an accessible activation mechanism for built-in closed captioning and, if so, what those notification requirements should be. We seek specific comment from individuals who are deaf or hard of hearing about the types of notices that would most effectively communicate this information.

14. Equipment Manufacturer Notice. We tentatively conclude that equipment manufacturers subject to Section 205 should be required pursuant to Section 205(b)(1) to inform consumers about the availability of audibly accessible devices and accessibility solutions. We propose that equipment manufacturers must prominently display accessibility information on their official websites, such as a through a link on their home pages. Similar to our requirement on MVPDs, such notices must publicize the availability of accessible devices and solutions and convey “the means for making requests for accessible equipment and the specific person, office or entity to whom such requests are to be made.” In addition, we seek comment on whether we need to impose additional notification requirements on equipment manufacturers subject to Section 205 and, if so, what those notification requirements should be. Should manufacturers also be required to notify consumers about the availability of audibly accessible devices or

accessibility solutions in marketing efforts, through their customer service centers and phone systems, or by other means? If so, describe what those measures should be and the costs and benefits associated with those measures to covered entities, including small entities.

15. If manufacturers choose to make available Section 303(bb)(1)-compliant devices or solutions at retail in the same way they make available other navigation devices in order to satisfy the “upon request” requirement in Section 205, should we require them to notify consumers at the point of sale that audibly accessible devices or accessibility solutions are available to consumers with disabilities to purchase or request. What should be the form of such a notice requirement? For example, do we need to impose a labeling requirement to identify Section 303(bb)(1) audibly accessible devices, or can manufacturers otherwise ensure adequate information to consumers at the point of sale about which devices contain the required accessibility features? To what extent should voluntary notification efforts by covered equipment manufacturers obviate the need for any specific notice requirements? We seek comment on the costs and benefits associated with such requirements on covered entities, including small entities. We seek specific comment from individuals who are blind or visually impaired about the types of equipment manufacturer notices that would most effectively communicate information about the availability of audibly accessible devices and accessibility solutions. We also seek comment about whether equipment manufacturer notification requirements are necessary to inform consumers about the availability of devices with an accessible activation mechanism for built-in closed captioning and, if so, what those notification requirements should be. We seek specific comment from individuals who are deaf or

hard of hearing about the types of notices that would most effectively communicate this information.

16. We seek comment on whether we need to impose notification requirements on equipment manufacturers subject to Section 204 to ensure consumers with disabilities are informed about which products contain the required accessibility features and which ones lack such features. To the extent we should adopt any notification requirements, we ask parties to describe what those notification requirements should be and the costs and benefits associated with any such requirements to covered entities, including small entities. Similar to our proposal for Section 205 covered equipment manufacturers, should we require Section 204 covered equipment manufacturers to display accessibility information on their official websites prominently, such as a through a link on their home pages? Such information might include a point of contact, as well as other information about how to seek assistance about accessibility issues or concerns. Should we require that customer service representatives of covered entities be able to answer consumer questions about which products contain the required accessibility features and which ones lack such features? How can manufacturers ensure that consumers are provided with accessibility information at the point of sale? For example, do we need to impose a labeling requirement to identify accessible digital apparatus, or can manufacturers otherwise ensure adequate information to consumers at the point of sale about which apparatus contain the required accessibility features? To what extent should voluntary notification efforts by covered equipment manufacturers obviate the need for any specific notice requirements? We seek specific comment from

individuals who are blind or visually impaired and who are deaf or hard of hearing about the types of notices that would most effectively communicate this information.

### **III. PROCEDURAL MATTERS**

#### **A. Initial Regulatory Flexibility Analysis**

17. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>23</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>24</sup> In addition, the FNPRM and this IRFA (or summaries thereof) will be published in the Federal Register.<sup>25</sup>

#### **1. Need for, and Objectives of, the Proposed Rule Changes**

18. The FNPRM seeks comment on several issues relating to implementation of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”). In general, these provisions direct the Commission to adopt rules requiring that digital apparatus and navigation device user interfaces used to view video programming be accessible to and usable by individuals who are blind or visually impaired. Specifically, Section 204 directs the Commission to require that “appropriate built-in apparatus functions” be made accessible to blind or visually

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<sup>23</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

<sup>24</sup> See 5 U.S.C. 603(a).

<sup>25</sup> See id.

impaired people. Section 205 directs the Commission to require that “on-screen text menus and guides provided by navigation devices” be made accessible upon request by blind or visually impaired individuals. Both of these provisions also require that covered devices provide a mechanism that is “reasonably comparable to a button, key, or icon designated for activating” closed captioning, video description, and accessibility features. In the FNPRM, the Commission also seeks comment on whether Section 203 of the CVAA provides the agency with authority to require apparatus covered by that provision to make the secondary audio stream used for audible emergency information accessible through a mechanism reasonably comparable to a button, key, or icon.

19. The Report and Order accompanying the FNPRM adopts rules requiring the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming. The rules adopted in the Report and Order effectuate Congress’s goals in enacting Sections 204 and 205 of the CVAA by: (1) enabling individuals who are blind or visually impaired to more easily access video programming on a range of devices; and (2) enabling consumers who are deaf or hard of hearing to more easily activate closed captioning on video programming devices. By imposing requirements with regard to the accessibility of user interfaces and video programming guides and menus, the rules adopted in the Report and Order advance Congress’s objective in the CVAA to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”<sup>26</sup> In the FNPRM, the Commission

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<sup>26</sup> H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010).

seeks comment on the adoption of targeted additional rules to implement Sections 204 and 205 of the CVAA, as discussed in Section D below.

## **2. Legal Basis**

20. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, 124 Stat. 2751, and the authority contained in sections 4(i), 4(j), 303(aa), 303(bb), 303(r), 303(u), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(aa), 303(bb), 303(r), 303(u), 617(g).

## **3. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply**

21. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the Report and Order.<sup>27</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>28</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>29</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>30</sup> Small entities that are directly affected by the rules adopted in the Report and Order and proposed in the FNPRM include manufacturers of digital apparatus, MVPDs

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<sup>27</sup> 5 U.S.C. 603(b)(3).

<sup>28</sup> Id. 601(6).

<sup>29</sup> Id. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>30</sup> 15 U.S.C. 632.

leasing or selling navigation devices, equipment manufacturers of navigation devices that place devices into the chain of commerce for sale to consumers, and other manufacturers of navigation device hardware and software.

22. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.”<sup>31</sup> The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.<sup>32</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>33</sup> Of this total, 30,178 establishments

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<sup>31</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (“CCTV”) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (“DTH”) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (“MMDS”).

<sup>32</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>33</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>34</sup>

Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

23. Cable Companies and Systems. The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>35</sup> Industry data shows that there were 1,141 cable companies at the end of June 2012.<sup>36</sup> Of this total, all but 10 incumbent cable companies are small under this size standard.<sup>37</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>38</sup> Current Commission records show 4,945 cable systems nationwide.<sup>39</sup> Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or

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<sup>34</sup> Id.

<sup>35</sup> 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>36</sup> NCTA, Industry Data, Number of Cable Operating Companies (June 2012), <http://www.ncta.com/Statistics.aspx> (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-06 para. 24 (2013) ("15<sup>th</sup> Annual Competition Report").

<sup>37</sup> See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (i.e., 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17245-46, para. 37 (2011) ("CALM Act Report and Order") (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

<sup>38</sup> 47 CFR 76.901(c).

<sup>39</sup> The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.



more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

24. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>40</sup> There are approximately 56.4 million incumbent cable video subscribers in the United States today.<sup>41</sup> Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>42</sup> Based on available data, we find that all but 10 incumbent cable operators are small under this size standard.<sup>43</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>44</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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<sup>40</sup> 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1-3.

<sup>41</sup> *See* NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

<sup>42</sup> 47 CFR 76.901(f); *see* Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>43</sup> *See* NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

<sup>44</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. *See* 47 CFR 76.901(f).

25. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,<sup>45</sup> which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>46</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>47</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>48</sup> Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.<sup>49</sup> Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and

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<sup>45</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>46</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>47</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>48</sup> Id.

<sup>49</sup> 13 CFR 121.201; NAICS code 517510 (2002).

DISH Network.<sup>50</sup> Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

26. Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs). SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers,<sup>51</sup> which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>52</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>53</sup> Of

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<sup>50</sup> See 15<sup>th</sup> Annual Competition Report, 28 FCC Rcd at 10507 para. 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. Id. at paras. 27, 110-11.

<sup>51</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>52</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>53</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United

this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>54</sup> Therefore, under this size standard, the majority of such businesses can be considered small.

27. Home Satellite Dish (HSD) Service. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.<sup>55</sup> The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.<sup>56</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>57</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818

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States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>54</sup> Id.

<sup>55</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>56</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>57</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

establishments had 100 or more employees.<sup>58</sup> Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

28. Open Video Services. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.<sup>59</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>60</sup> OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.<sup>61</sup> The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.<sup>62</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>63</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>64</sup> Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission

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<sup>58</sup> Id.

<sup>59</sup> 47 U.S.C. 571(a)(3)-(4). See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, para. 135 (2009) (“Thirteenth Annual Cable Competition Report”).

<sup>60</sup> See 47 U.S.C. 573.

<sup>61</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>62</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>63</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>64</sup> Id.

has certified some OVS operators, with some now providing service.<sup>65</sup> Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.<sup>66</sup> The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

29. Wireless cable systems – Broadband Radio Service and Educational Broadband Service. Wireless cable systems use the Broadband Radio Service (BRS)<sup>67</sup> and Educational Broadband Service (EBS)<sup>68</sup> to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.<sup>69</sup> The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are

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<sup>65</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsceer.html>.

<sup>66</sup> See Thirteenth Annual Cable Competition Report, 24 FCC Rcd at 606-07, para. 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

<sup>67</sup> BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). See Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

<sup>68</sup> EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See id.

<sup>69</sup> 47 CFR 21.961(b)(1).

approximately 392 incumbent BRS licensees that are considered small entities.<sup>70</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.<sup>71</sup> The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.<sup>72</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>73</sup> Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

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<sup>70</sup> 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

<sup>71</sup> Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, Public Notice, 24 FCC Rcd 8277 (2009).

<sup>72</sup> Id. at 8296.

<sup>73</sup> Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, Public Notice, 24 FCC Rcd 13572 (2009).

30. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services."<sup>74</sup> The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.<sup>75</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>76</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>77</sup> Therefore, under this size standard, we estimate that the majority of businesses can be considered small

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<sup>74</sup> U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

<sup>75</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>76</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>77</sup> *Id.*



entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.<sup>78</sup> The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.<sup>79</sup>

31. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers.<sup>80</sup> Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>81</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>82</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>83</sup> Therefore, under this size standard, the majority of such businesses can be considered small.

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<sup>78</sup> <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

<sup>79</sup> The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)-(6).

<sup>80</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>81</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>82</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>83</sup> Id.

32. Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers in this present RFA analysis. A “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>84</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>85</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

33. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA’s economic census category, Wired Telecommunications Carriers.<sup>86</sup> Under this category,

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<sup>84</sup> 15 U.S.C. 632.

<sup>85</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 CFR 121.102(b).

<sup>86</sup> See 13 CFR 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>87</sup>

Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>88</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>89</sup> Therefore, under this size standard, the majority of such businesses can be considered small.

34. Radio and Television Broadcasting and Wireless Communications

Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>90</sup> The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees.<sup>91</sup> Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year.<sup>92</sup> Of those, 912 operated with fewer than 500 employees, and 27 operated with 500 or more employees.<sup>93</sup> Therefore, under this size standard, the majority of such establishments can be considered small.

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<sup>87</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>88</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>89</sup> Id.

<sup>90</sup> U.S. Census Bureau, 2012 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>91</sup> 13 CFR 121.201; 2012 NAICS code 334220.

<sup>92</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2007 – 2007 Economic Census,” NAICS code 334220, Table EC0731SG3; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>93</sup> Id.

35. Audio and Video Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.”<sup>94</sup> The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees.<sup>95</sup> Census data for 2007 shows that there were 492 establishments in this category operated for part or all of the entire year.<sup>96</sup> Of those, 488 operated with fewer than 500 employees, and four operated with 500 or more employees.<sup>97</sup> Therefore, under this size standard, the majority of such establishments can be considered small.

#### **4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

36. In the accompanying Report and Order, the Commission adopted rules establishing the general regulatory framework applicable to entities subject to Sections 204 and 205 of the CVAA. The Commission, in the FNPRM, proposes a few additional rules to address possible gaps in coverage of rules adopted in the Report and Order. In this section, we describe the reporting, recordkeeping, and other compliance requirements

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<sup>94</sup> U.S. Census Bureau, 2012 NAICS Definitions, “334310 Audio and Video Equipment Manufacturing” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>95</sup> 13 CFR 121.201; 2012 NAICS code 334310.

<sup>96</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2007 – 2007 Economic Census,” NAICS code 334310, Table EC0731SG3; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>97</sup> Id.

proposed in the FNPRM and consider whether small entities are affected disproportionately by any such requirements.

37. Recordkeeping Requirements. The FNPRM proposes certain recordkeeping requirements that would be applicable to covered small entities. In particular, the FNPRM:

- proposes to implement the requirement that covered apparatus make appropriate built-in functions “usable by” individuals who are blind or visually impaired, by defining the term “usable,” and by adopting information, documentation, and training requirements that are analogous to rules the Commission has adopted in other CVAA contexts;
- seeks comment on whether to adopt additional consumer notification requirements for MVPDs, and what those requirements should be;
- tentatively concludes that equipment manufacturers subject to Section 205 should be required to inform consumers about the availability of accessible devices and accessibility solutions, proposes that equipment manufacturers must prominently display accessibility information on their official website, and seeks comment on whether additional notification requirements are necessary and, if so, what those requirements should be; and
- requests comment on whether to impose notification requirements on equipment manufacturers subject to Section 204 to ensure consumers with disabilities are informed about which products contain the required accessibility features and which ones lack such features.

38. Other Compliance Requirements. The FNPRM proposes other compliance requirements that would be applicable to covered small entities. In particular, the FNPRM:

- seeks comment on whether the phrase “accessibility features” in Sections 303(aa)(3) and 303(bb)(2) of the Act includes user display settings for closed captioning, whether those sections can be interpreted to require covered entities to ensure that consumers are able to locate and control such settings, and how the Commission would implement a requirement to provide an activation mechanism reasonably comparable to a button, key or icon with regard to user display settings for closed captioning;
- seeks comment on whether to require manufacturers of apparatus covered by Section 203 of the CVAA to provide access to the secondary audio stream used for audible emergency information by a mechanism reasonably comparable to a button, key, or icon, and how to implement such a requirement.

39. Because no commenter provided specific information quantifying the costs and administrative burdens associated with the rules adopted in the accompanying Report and Order, we cannot precisely estimate the impact of the rules proposed in the FNPRM on small entities. As discussed in Section E infra, however, Sections 204 and 205 of the CVAA afford covered entities maximum flexibility in the means and manner of complying with the statute and its implementing rules, including those proposed in the FNPRM. In addition, entities subject to Sections 203, 204 and 205 need not comply with

certain accessibility requirements if they are able to demonstrate to the Commission that compliance is not achievable.<sup>98</sup>

40. Based on the record of this proceeding, MVPDs, in particular, have expressed concern regarding the potential for the rules adopted in accompanying Report and Order to place a disproportionate economic impact on smaller MVPDs. In particular, NCTA and NTCA have asserted that the rules proposed in the Notice of Proposed Rulemaking likely would affect small companies to a greater extent than large companies. Thus, while the economic impact of the rules on small entities is not quantifiable at this time, based on the general assertions of these parties, it appears likely that the proposed rules, if adopted, would affect small MVPDs disproportionately. As a result, the Commission in Section E below considers alternatives that have the potential to minimize the economic effect of its proposed rules on small entities, consistent with Congress's mandates in Sections 203, 204 and 205.<sup>99</sup>

## **5. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

41. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

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<sup>98</sup> See 47 U.S.C. 303(u)(2) (requiring that certain apparatus comply with accessibility requirements in Section 303(u)(1) of the Act only "if achievable"); 47 U.S.C. 303(aa)(1) (requiring, among other things, that certain digital apparatus be designed, developed, and fabricated so that control of appropriate built-in functions are accessible to and usable by individuals who are blind or visually impaired "if achievable"); 303(bb)(1) (requiring, among other things, that certain on-screen text menus and guides be audibly accessible in real time "if achievable").

<sup>99</sup> We note that SBA filed comments in response to the initial IRFA in this proceeding expressing concerns regarding the IRFA's compliance with the RFA. In view of SBA's concerns, we discuss in greater detail in this IRFA the potential disproportionate impact on small entities of the rules proposed in the FNPRM, as well as discussing the impact of the final rules on such entities.

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>100</sup>

42. Similar to the rules promulgated in the accompanying Report and Order, the rules proposed in the FNPRM, if adopted, could have a significant economic impact on a substantial number of small entities.<sup>101</sup> Although the proposals in the FNPRM stem from the Congressional mandates set forth in Sections 203, 204 and 205 of the CVAA, the Commission has considered whether any alternatives exist that would allow it to minimize the economic impact of such proposals (if adopted) on small entities. As discussed below, Sections 203, 204 and 205 of the CVAA each contain provisions that allow the Commission to tailor its rules, as necessary, to small entities for whom compliance with such rules is economically burdensome.

43. First, an entity (including a small entity) subject to Sections 203, 204 and 205 can avoid compliance with certain accessibility requirements if it is able to demonstrate to the Commission that such compliance is not “achievable” (i.e., cannot be accomplished with reasonable effort or expense). In the accompanying Report and Order, the Commission adopted procedures enabling it to determine that a particular entity, including a small entity, need not comply with the accessibility requirements in Sections 204 and 205 where such entity has made this showing.<sup>102</sup> These procedures will

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<sup>100</sup> 5 U.S.C. 603(c)(1)-(c)(4).

<sup>101</sup> In the FNPRM, the Commission seeks comment on the impact of its proposed rules on small entities.

<sup>102</sup> Achievability is determined through a four factor analysis that examines: (1) the nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question; (2) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; (3) the type of operations of the manufacturer or



allow the Commission to address the impact of the rules on individual entities, including smaller entities, on a case-by-case basis, and to modify application of its rules to accommodate individual circumstances, thereby potentially reducing the costs of compliance for such entities. We note that two of the four statutory factors that the Commission must consider in assessing achievability are particularly relevant to small entities: (i) the nature and cost of the steps needed to meet the requirements, and (ii) the technical and economic impact on the entity's operations. Thus, with respect to certain proposed rules that derive from Sections 203, 204 or 205 of the CVAA, a small entity may be able to avoid compliance in cases where it can demonstrate that compliance is not achievable.

44. In addition, with respect to rules proposed in the FNPRM that have their statutory basis in Section 204 of the CVAA (e.g., proposal to define the term “usable” and to adopt information, documentation, and training requirements analogous to rules the Commission has adopted in other CVAA contexts), we note that entities covered by Section 204(a), including small entities, can pursue alternate means of complying with the requirements of that provision. As set forth in the accompanying Report and Order, the Commission will permit an entity that seeks to use an alternate means of compliance to file a request pursuant to § 1.41 of the Commission's rules for a determination that the proposed alternate means of compliance satisfies the relevant requirements, or to claim in defense to a complaint or enforcement action that the Commission should determine that the party's actions were permissible alternate means of compliance. The Commission

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provider; and (4) the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points. 47 U.S.C. 617(g). Through this analysis, an otherwise covered entity can demonstrate that accessibility is not achievable.

will evaluate such filings on a case-by-case basis. Similarly, entities covered by Section 205 of the CVAA can satisfy their accessibility obligations through the use of built-in or separate solutions and are given “maximum flexibility to select the manner of compliance” with Section 303(bb)(1) of the Act, as well as “maximum flexibility in the selection of the means for compliance with Section 303(bb)(2)” of the Act.<sup>103</sup> Individual entities, including small entities, can take advantage of the flexibility afforded by these provisions.

45. With respect to the proposal in the FNPRM to require apparatus covered by Section 203 to make the secondary audio stream used for audible emergency information accessible through a mechanism reasonably comparable to a button, key, or icon, we note that if the Commission were to adopt this requirement, entities covered by Section 203, including small entities, potentially can benefit from provisions in Section 203 that impose certain accessibility requirements only where “achievable” or “technically feasible.”<sup>104</sup>

46. Finally, in the accompanying Report and Order, the Commission adopted rules that defer compliance with the requirements of Section 205 by two years for certain mid-sized and smaller MVPD operators and small MVPD systems. In particular, the Commission afforded certain mid-sized and smaller MVPD operators (i.e., those with 400,000 or fewer subscribers) and small MVPD systems (i.e., those with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers) more time to comply with the requirements of Section 205. This type of delayed compliance schedule can help to minimize the economic impact of any

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<sup>103</sup> See Pub. L. 111-260, 205(b)(4)(A), 205(b)(5).

<sup>104</sup> See 47 U.S.C. 303(u)(1), (2).

requirements adopted pursuant to the FNPRM and address any disproportionate impact of such requirements on small entities. In addition, we note that, if the delayed compliance deadline proves insufficient to allow small systems to implement an affordable solution, the Commission may consider requests for a further extension on an individual or industry-wide basis.

47. Based on these considerations, we believe that, in proposing additional rules in the FNPRM, we have appropriately considered both the interests of blind or visually impaired individuals and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress' goal to "update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming."<sup>105</sup>

#### **6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

48. None.

#### **B. Paperwork Reduction Act**

49. The FNPRM may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4),

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<sup>105</sup> H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S.Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010).

the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

### **C. Ex Parte Rules**

50. Permit-But-Disclose. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be

filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

#### **D. Filing Requirements**

51. Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00

p.m. All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

52. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

53. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### **E. Additional Information**

54. For additional information on this proceeding, contact Adam Copeland, [Adam.Copeland@fcc.gov](mailto:Adam.Copeland@fcc.gov), or Maria Mullarkey, [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

#### IV. ORDERING CLAUSES

55. Accordingly, **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g), the Report and Order and Further Notice of Proposed Rulemaking **IS ADOPTED**, effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for 47 CFR 79.107(c), 79.108(a)(5), 79.108(c)-(e), and 79.110, which shall become effective upon announcement in the Federal Register of OMB approval and an effective date of the rules.

56. **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303(r), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(aa), 303(bb), and 617(g), the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B.

57. **IT IS FURTHER ORDERED** that we delegate authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider all requests for declaratory rulings pursuant to § 1.2 of the Commission's rules, 47 CFR 1.2, all waiver requests pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and all informal requests for Commission action pursuant to § 1.41 of the Commission's rules, 47 CFR

1.41, filed under these rules and pursuant to Sections 204 and 205 of the CVAA as discussed herein.

58. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of the Report and Order and Further Notice of Proposed Rulemaking in MB Docket No. 12-108, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

59. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of the Report and Order and Further Notice of Proposed Rulemaking in MB Docket No. 12-108 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers.

FEDERAL COMMUNICATIONS COMMISSION.

Sheryl D. Todd,  
Deputy Secretary.



For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

## **PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING**

1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

2. Section 79.108 is amended by revising paragraph (d) to read as follows:

### **§ 79.108 Video programming guides and menus provided by navigation devices.**

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(d)(1) MVPD notices. Covered MVPDs must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request as follows:

- (i) When providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices.
- (ii) MVPDs must provide notice on their official websites about the availability of accessible navigation devices. MVPDs must prominently display information about accessible navigation devices and separate solutions on their websites in a way that makes such information available to all current and potential subscribers. The notice must publicize the availability of accessible devices and separate solutions and explain the means for making requests for accessible equipment and the specific person, office or entity to whom such requests are to be made. All information required by this section must be provided in a website format that is accessible to people with disabilities.

(2) Navigation device manufacturer notices. Navigation device manufacturers must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request as follows: A navigation device manufacturer must provide notice on its official website about the availability of accessible navigation devices. A navigation device manufacturer must prominently display information about accessible navigation devices and solutions on its website in a way that makes such information available to all current and potential consumers. The notice must publicize the availability of accessible devices and solutions and explain the means for making requests for accessible equipment and the specific person, office or entity to whom such requests are to be made. All information required by this section must be provided in a website format that is accessible to people with disabilities.

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[FR Doc. 2013-28088 Filed 12/19/2013 at 8:45 am; Publication Date: 12/20/2013]